IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 31506 of 2006(A)

PETITIONER:

S.SAKKIR,
S/O.SAINUDDIN PILLAI, SHASKANS, THANNIMOODU,
IRINCHAYAM, NEDUMANGAD, THIRUVANANTHAPURAM DIST.

BY ADV. SRI.K.I.ABDUL RASHEED
SMT.K.N.VIGY

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
PRINCIPAL SECRETARY,
GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR,
KERALA STATE COUNCIL OF EDUCATIONAL RESEARCH
AND TRAINING, THIRUVANANTHAPURAM.

R2 BY ADV. SRI.MOHAMMED YOUSEFF
R1 BY GOVERNMENT PLEADER SRI. A.J. VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.31506 OF 2006

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Dated this the 5th day of January, 2007.

JUDGMENT

Petitioner was appointed vide Ext.P1 as District Co-ordinator on contract basis. By Ext.P2 the petitioner was appointed as Joint State Co-ordinator. Ext.P3 is the agreement executed. Ext.P4 is the order by which the Government has ordered that service of the Joint State Co-ordinator on contract basis is not necessary at present for the Kerala State Open School. The Director was to place the matter before the next governing body of the Kerala State Open School and to take steps to cancel the contract executed by the incumbent in terms of the contract. Petitioner approached this court against Ext.P4. He would contend among other things that it is illegal. Ext.P3 contains a clause that the engagement is till a regular hand is appointed on the finalisation of special rules, staff pattern etc. It is submitted that special rules have not been approved by the Government even though it is approved by the governing body. It is the further case of the petitioner that the attempt of the respondent is to appoint a person of

their choice on extraneous considerations. There is no reason stated for canceling Ext.P2 order, it is contended. It is contended that it is to facilitate appointment to another person, who is in fact even named in the reply affidavit. It is further pointed out that in fact that the reason stated in Ext.P4 cannot be justified and that even in proposed rules, there is a post of Co-ordinator.

2. In the statement it is pointed out that under Clause 7 in Ext.P3 it is open to give one month's notice. It is further pointed that petitioner is doing part-time research in Hydrogeology at Cochin University and that the Government felt that service of the petitioner is not essential for the smooth functioning of the institution. It is also pointed out by the learned Government Pleader that the petitioner does not possess the qualification prescribed in Ext.P5.

3. In the reply affidavit petitioner produced Exts. P5 to P7. It is clear that under the contract the petitioner has a right to continue till a regular hand is appointed on the finalisation of the Special Rules. But Clause 7 enables the Government to terminate the contract after giving one month's notice in writing. There is also a further provision is

Clause 7 enabling termination in certain contingencies mentioned therein. Learned Government Pleader points out that Ext.P4 contemplated taking of action in terms of Ext.P3 agreement and it is because this court has stayed Ext.P4 that further action is not being taken in terms of the contract.

4. I feel that the contentions taken by the petitioner against Ext.P4 at this stage is premature. No doubt till the service of the petitioner is terminated in terms of the contract under Ext.P3 Clause 1 or Clause 7, he is entitled to continue. As of now it is admitted that no notice was served giving one month's time in view of the fact that Ext.P4 came to be stayed. I make it clear that while the petitioner can continue till the service is terminated in terms of the agreement, it will not stand in the way of the Director invoking Ext.P3 agreement to take action to terminate the service of the petitioner. Also I make it clear that in such an event it is open to the petitioner to raise all contentions against Ext.P4.

The writ petition is disposed of as above.

sb. (K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.